Supreme Court, U.S.
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No.

In the Supreme Court of the United States

GHEORGHE VASILE CRETU,
Petitioner,

v.

JOHN ASHCROFT, U. S. Attorney General,
Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioner, in asking for a new removal hearing because his due process rights were abrogated by the incompetent translation of his testimony in support of his persecution claim, is required to show he suffered substantial prejudice thereby.

2. Whether the BIA and Fifth Circuit's conclusion that Petitioner had not appealed his removal order constitutes a travesty of justice.

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner states that no parent company or publicly held company that owns 10 percent or more of the corporation's stock is involved or implicated in this matter.

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App. A-1) is unreported. The opinion of the Board of Immigration Appeals ("BIA") (App. A-3)is unreported. The opinion of the Immigration Judge ("IJ") (App. A-5) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 18, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. Sect. 1254 and SUP. CT. R. 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves 8 U.S.C. Sect. 1231(b)(3)(A), which provides in relevant part that: "[T]he Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."

In addition, this case involves U.S. CONST. amend. V: "No person shall ... be deprived of life, liberty, or property, without due process of law...."

STATEMENT

I. Petitioner's Persecution Claim

In proceedings below, Petitioner asked for relief, inter alia, in the form of withholding of removal under 8 U.S.C. 1231(b)(3) (see above-cited statutory text), due to the persecution he feared in his home country.

Petitioner was born in Transylvania, Romania, in 1968. Certified Administrative Record ("AR"), as filed with the court of appeals below, at 183. He and his ancestors are ethnic Roma Gypsies. *Ibid.* They were always persecuted because of their Gypsy heritage. *Ibid.*

In 1994, Petitioner was told that the police and neighbors had been inquiring about his ethnic background, and that some of the customers at his slaughterhouse had been threatened. AR 185. Petioner was physically attacked in 1995 by a policeman and two civilians, who smashed his car, causing serious cuts to his passenger, and less grave injuries to himself; the attackers called him "trash" and said it was time to pay. *Ibid.* He reported the incident, but was told at the police station it was useless to complain. *Ibid.*

After this incident Petitioner was constantly followed and in fear, and his business suffered because his customers feared coming to him. AR 186. In August 1995, while he was at his parents' house, national guardsmen broke in and beat him as his father and grandfather watched; he was badly bruised and his arm was broken. *Ibid.* He was treated privately by a lady doctor who was a friend of his mother's. *Ibid.* This time when Petitioner reported the attack, he was

told he and his relatives were to blame, and they called him a "miserable gypsy" who embarrassed them by his presence. *Ibid.*

Petitioner was savagely attacked at his parents' house again by Romanian officials in February 1996, this time suffering a cut on his leg from which he still bears the scar. *Ibid.* He was treated by the same doctor. *Ibid.* His father died soon after, largely, he believes, from the trauma caused by witnessing his son's beating. *Ibid.* He was set upon once more in 1996 by the police, who nearly killed him this time: his arm was dislocated and he was bruised all over. AR 187.

In March 1997 Petitioner received notice to present himself at the police station on the twenty-fourth of said month. *Ibid.* When he complied he was again beaten, this time by two officers who interrogated him about his acquaintances, accusing him of opposing Gheorge Funar, an anti-Gypsy politician. *Ibid.* They also threatened to burn his home and kill his son. *Ibid.* This incident left him with thoracic trauma and three broken ribs. *Ibid.* More threats followed over the telephone. *Ibid.*

Attacks grew against Gypsies into 1998. *Ibid.* Petitioner feared for himself, and for his wife and child, whom he felt were threatened by the mere fact of his presence in the country. *Ibid.* He decided to "buy" a U.S. visa, and used it to enter this country in September 1998, with authorization to remain until March 1999. *Ibid.*

Petitioner's family in Romania received two police notices in 2000 asking his whereabouts, one of which was forwarded to him and submitted with his asylum application. *Ibid.*

II. Decisions Below

Petitioner's withholding of removal claim was initially denied by an Immigration Judge ("IJ"), who recited the basic facts as given in Petitioner's application and testimony. App. A-9 - A-15. Throughout her summation of the testimony, the IJ continually used phrases such as "the respondent's testimony was that...," or "he/respondent says/said/relates/related...." These phrases are repeated more than forty times. *Ibid.* The IJ never once stated whether she believed what Petitioner was telling her, nor did she make a specific credibility finding at any point.

The IJ did, however, find great significance in the fact that three preprinted medical certificates that Petitioner submitted, saying that they were given him by the doctor who treated him after he was beaten on various occasions from 1995 to 1997, as set forth above, all bore the printed date of 2000, said date having been scratched out and the date of the purported actual treatment substituted in handwriting. App. A-12 - A-13. He noted that Petitioner's translated testimony had been that he had received these certificates contemporaneously with the time of each treatment, an apparent discrepancy. *Ibid.* Because of this, the IJ ruled that he would give the certificates "no weight." App. A-13.

The IJ found further significance in the following: that Petitioner had lived through various periods of his life without mistreatment; that his father and grandfather had not been arrested or physically harmed; that he had remained in Romania for awhile after his last claimed beating before fleeing; and that his persecution appeared motivated in part by mere greed on the part of the authorities, given his status as

a successful businessman. App. A-13 - A-14. The IJ found also that Petitioner had failed to prove he could not avoid danger by relocating elsewhere in Romania. App. A-14 - A-15. Accordingly, he denied relief. App. A-15.

In his administrative appeal to the Board of Immigration Appeals ("BIA"), Petitioner argued that the translation at the IJ hearing was so incompetent that the matter would have to be remanded for a new hearing. AR 22-29. He attached a sworn statement by an individual present at the asylum hearing, who is fluent in both English and Romanian, and who stated that the translator, amongst many egregious errors, had not asked Petitioner if the medical certificates in contention at his hearing were received by him at the time of each doctor visit (as the government attorney had asked), but rather had asked merely if those certificates were the ones that his mother received, without respect to time. AR 34-35. He argued that the interpreter's repeated mistranslations had so damaged Petitioner's credibility that he was prevented from receiving a fair hearing on his persecution claim. *Ibid.*

The BIA ignored this argument, holding, in a three-paragraph opinion, that the mistranslated testimony complained of was not "a basis for the Immigration Judge's decision," and that Petitioner had therefore not "appeal[ed] the decision of the Immigration Judge." App. A-3 - A-4. The court of appeals reasoned similarly that "because no alleged translation problem concerned the basis of the IJ's decision[,...] [Petitioner] does not appeal the IJ's decision that denied [...] withholding of deportation." App. A-2.

REASONS FOR GRANTING THE PETITION

I. This Case Squarely Presents an Opportunity to Resolve a Longstanding Split in the Circuits on an Important and Recurring Constitutional Issue

Aliens are entitled to Fifth Amendment due process protections in removal proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Specifically, by statute and regulation, aliens are accorded the right to examine evidence brought against them and to present an adequate case on their own behalf. 8 USC Sect. 1229a(b)(4)(B); 8 CFR Sect. 1240.10(a)(4). The BIA has specifically ruled that these rights include the right to competent translation. *Matter of Tomas*, 19 I&N Dec. 464, 465 (BIA 1987).

A split exists in the Circuits, however, over whether and to what degree an alien must prove he or she is prejudiced when the government abrogates the constitutionally-protected right to competent translation.

For instance, *Montilla v. INS*, 926 F.2d 162 (2d Cir. 1994), involved a violation of an alien's constitutional right to counsel. The Second Circuit invoked the "*Accardi* doctrine" in *Montilla*, holding that because the government had failed to adhere to its own regulations designed to protect such a fundamental right, Mr. Montilla was not required to show any specific prejudice to merit remand of his case. 926 F.2d at 169 (citing *Accardi v. Shaughnessy*, 347 U.S. 216 (1954)); see also *U.S. v. Fernandez-Antonia*, 278 F.3d 150, 157 (2d Cir. 2002).

In the Seventh and Ninth Circuits, the alien is

required to show that such a constitutional deprivation requires remand if it "potentially affected" (emphasis supplied) the outcome of the case. *See, e.g., Shahandeh-Pey v. INS*, 831 F.2d 1384, 1389 (7th Cir. 1987), *and Hartooni v. INS*, 21 F.3d 336, 340 (9th Cir. 1994); *see also Szczesny v. Ashcroft*, 358 F.3d 464, 466 (7th Cir. 2004), *and Martinez-de Bojorquez v. Ashcroft*, 365 F.3d 800, 806 (9th Cir. 2004).

The present matter arose in the Fifth Circuit, which, upon information and belief, has not explicitly recognized the entitlement to adequate translation as a fundamental right in deportation/removal proceedings. The Fifth Circuit would therefore apply its basic due process analysis, whereunder it overturns a deportation order only if the alien shows a due process deprivation, and proves that he/she suffered "substantial prejudice" as a result. See, *e.g., Anwar v. INS*, 116 F.3d 140, 144 (5th Cir. 1997). This is in fact the approach taken by the Fifth Circuit in the present case. App. A-2.

In the present matter, as noted, the IJ did not make an explicit credibility finding, nor did she reason that Petitioner had made no case even accepting arguendo the truth of his evidence and testimony. The BIA and Fifth Circuit failed to cure this defect. In other words, there was no ruling that the alleged mistranslations did not occur. Rather, the IJ, the BIA and the Fifth Circuit held in effect that while the translation accorded Petitioner might have been inadequate, this was harmless error, since it did not change the outcome of the case; i.e., he was not prejudiced because the errors alleged did not directly concern the bases for the IJ's decision.

While this result might arguably comport with Fifth Circuit "subtantial prejudice" analysis, it clearly would not survive scrutiny in the Second Circuit. The Seventh and

Ninth Circuits would presumably also have remanded, since absent the doubts cast on Petitioner's credibility by the key mistranslations, one can easily imagine a "potentially" different outcome. The present case therefore squarely presents an opportunity to resolve a split in the circuits on an important, recurring, and longstanding constitutional issue.

II. This Case Presents an Opportunity to Redress a Travesty of Justice

As noted, Petitioner set forth a tale of considerable woe in proceedings below, detailing brutal attacks and mental anguish and alleging in no uncertain terms that he feared torture and/or death should he be returned to Romania. His administrative appeal argued that key elements of his testimony had been distorted by incompetent translation, and that in his opinion this caused the IJ to disbelieve his story and ultimately to deny him relief. To conclude, as did the BIA and the Fifth Circuit, that Petitioner thereby failed to appeal his removal order is, it is submitted, a travesty of justice that must be redressed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Attorney of Record for
Petitioner Gheorghe Cretu

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Filed
June 18, 2004

No. 03-60823
Summary Calendar

GHEORGHE VASILE CRETU,

Petitioner,

versus

JOHN ASHCROFT, U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A78 273 379

Before HIGGINBOTHAM, DAVIS and PRADO, Circuit Judges.

PER CURIAM: *

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 03-60823

Gheorghe Cretu, a citizen of Romania, petitions for review of the final order of the Board of Immigration Appeals (BIA). The BIA held that Cretu was not denied procedural due process on account of alleged deficiencies in the translation of his trial before the Immigration Judge (IJ) because no alleged translation problem concerned the basis of the IJ's decision. Cretu does not appeal the IJ's decision that denied asylum on grounds of an untimely application, denied withholding of deportation, and granted voluntary departure.

This court reviews a claim of a due process violation de novo. Ogbemudia v. INS, 988 F.2d 595, 598 (5th Cir. 1993). Proving such a claim "requires a showing of substantial prejudice." Chike v. INS, 948 F.2d 961, 962 (5th Cir. 1991) (internal quotation marks and citation omitted). Because any deficiencies in translation did not concern the grounds for the IJ's decision, there was no "substantial prejudice."

Accordingly, Cretu's petition for review is DENIED.

PETITION FOR REVIEW DENIED.

APPENDIX B

U.S. Department of Justice **Decision of the Board of Immigration Appeals**

Executive Office for Immigration Review
Falls Church, Virginia 22041

Received
SEP 25 2003

File: ✓A78-273-379 - NEW ORLEANS Date: SEP 17 2003

In re: CRETU, GHEORGHE VASILE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Martin A. Robles, Esq.

ON BEHALF OF DHS: Manuel Ramirez, Assistant District Counsel

ORDER:

PER CURIAM. We affirn the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). The respondent does not appeal the decision of the Immigration Judge. Instead the respondent argues that he did not receive a fair trial due to problems with the interpreter. Even if, assuming

arguendo, interpretation problems existed with respect to the respondent's testimony about his relationship with his prior attorney and the medical reports, neither of these were a basis for the Immigration Judge's decision. Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the alien is permitted to voluntarily depart from the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (f). In the event the alien fails to so depart, the alien shall be removed as provided in the Immigration Judge's order.

NOTICE: If the alien fails to depart the United States within the time period specified, or any extensions granted by the district director, the alien shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/s/ John illegible
FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
New Orleans, Louisiana

File No.: A 78 273 379 April 15, 2002

In the Matter of	)	
	)	
GHEORGHE VASILE CRETU	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	
	)	

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act - an alien who had remained in the United States for a longer time than permitted.

APPLICATIONS: Asylum under Section 208 of the Act; withholding under Section 241(b) of the Act; and voluntary departure under Section 240B of the Act.

ON BEHALF OF RESPONDENT:
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ON BEHALF OF SERVICE:
Manuel Ramirez
Assistant District Counsel
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New Orleans, Louisiana 70113

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of Romania, who was admitted into the United States at Detroit, Michigan, on or about September 22, 1998, as a visitor authorized to remain for a period, not to exceed six months. The respondent stayed in the United States beyond the authorized time without authorization from the Immigration Service. These proceedings commenced after issuance of a Notice to Appear, dated July 19, 2001. The respondent appeared in initial Master Calendar proceedings on September 13, 2001. The respondent appear with counsel. On that date admitted the factual allegations contained in the Notice to Appear, and conceded that respondent was removable as charged. The respondent designated Romania as the country for removal. As relief from removal the respondent is seeking asylum, withholding under the Act, and in the alternative voluntary departure. The application for relief was filed with the Court on November 8, 2001. The matter was reset for asylum merits to April 15, 2002.

At the hearing on November 8, 2001, the Immigration Judge noted that there might be an issue as to asylum eligibility, as the application for relief was filed more than one year after the respondent's removal in the United

States. The Court left that issue to be resolved at the hearing on the merits. Before discussing the one year bar, the Court will set forth the statutory criteria for relief under both asylum and withholding. An asylum applicant bears the evidentiary burden of proof to establish his or her asylum claim. To establish eligibility for a grant of asylum, an alien must demonstrate that he or she is a refugee within the mean of 101(a)(42)(A) of the Act. That Section defines a refugee as any person who is unable or unwilling to return to his or her country, because of persecution or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group or political opinion. An applicant for asylum has established that his or her fear is well-founded if he shows that a reasonable person in his circumstances would fear persecution. See Matter of Moaharrabi, 19 I&N Dec. 439 (BIA 1987). Asylum, unlike withholding of removal, may be denied in the exercise to an alien who establishes statutory eligibility for relief. See INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); Matter of Moaharrabi, supra.

To establish eligibility for withholding of removal, pursuant to Section 241(b) of the Act, an alien must demonstrate a clear probability of persecution in the country designated for removal, on account of race, religion, nationality, membership in a particular social group or political opinion. See INS v. Stevic, 467 U.S. 407 (1984). This means that the alien must establish that it is more likely than not that he would be subject to persecution for one of the grounds specified in the Act. With regard to burden of proof, the Board has held that where an alien's testimony is the only evidence available, it can suffice where the testimony is believable, consistent, and sufficiently detailed to provide a plausible

and coherent account of the basis of the alien's alleged fear. See Matter of Dass, 20 I&N Dec. 120, 124 (BIA 1989). See also Matter of M-D-, Int. Dec. 3339 (BIA 1998).

The Board has reiterated and clarified its holding in Matter of S-M-J-, 21 I&N Dec. 722, 724 (BIA 1997), that where general background information on Country Conditions, it must be included as a foundation for an asylum claim. They have also held that where an applicant's claim relies primarily upon personal experiences, not reasonably subject to verification, corroboration and cooperative documentary evidence is not required. However, the Board went on to explain that where it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of an applicant's claim, such evidence should be provided, or an explanation should be given as to how such information was not presented. The absence of such corroboration can lead to a finding that an applicant has failed to meet his burden of proof.

While most immigrants are eligible to apply for asylum, there are certain exceptions. There is a time limit for aliens to apply for relief. Under Section 208(a)(2)(B) of the Act, aliens must demonstrate by clear and convincing evidence that the application for asylum has been filed within one year after the date of the alien's arrival in the United States. Notwithstanding that paragraph, if an alien demonstrates to the satisfaction of the attorney general, that either there is an existence of changed circumstances, which materially effect the alien's eligibility for asylum, or extraordinary circumstances relating to the delay in filing the application within the specified period, the alien can still seek asylum. The respondent started the hearing by giving an explanation as to why the application for relief was not filed until after he

was apprehended by INS agents in July of 2001, some three years after his arrival.

The respondent's testimony was that, after arriving in Michigan, he met a friend, a Mr. Iancu Iosif, who was also a Romanian citizen. He says, through Mr. losif, they contacted a Mr. Victor Polask, who indicated that after being paid $1,500, he would arrange for the respondent to get, both an extension of his visa, as well as file for asylum for him. The respondent was not very specific about the dates that the events occurred. He did not give a specific date as to when he first say Mr. Polask. It was unclear to the Court whether there was one in person visit, and later a telephonic visit. Or if the respondent's friend, Mr. Iosif, was the one who did the primary contact. The application does indicate that Mr. Polask was an attorney, but they indicated that after paying the money at some later date, they were unable to contact Mr. Polask. There was nothing in the respondent's testimony that indicated that there were any changed circumstances in Romania, that would cause the late filing.

Therefore, the Court will consider whether there were any extraordinary circumstances as defined in Section 208(a)(2)(B) of the Act, that would warrant the late filing. The regulations are specific as to what has to be established relating to extraordinary circumstances. Some of these relate to a leqal disability, that being a minor (this does not appear to be the case), serious illness, either physical or mental of the respondent or violent harm suffered in the past, or in the year after arrival (this does not appear to be the case). Or ineffective assistance of counsel. This appears to be the Section which the respondent relies upon.

In order to establish ineffective assistance of counsel, lead to the delay, the respondent has to provide certain things. One is an affidavit setting forth in detail, the agreement that was entered into with counsel, with respect to the actions taken of what representations counsel did or did not make to the respondent in this regard. Also, the counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him or her and given an opportunity to respond. The alien also has to indicate whether a complaint has been filed with the appropriate disciplinary authorities, with respect of any violations of the counsel's ethical or legal responsibilities and, if not, why not. None of these were presented to the Court. The only thing presented was an affidavit for Mr. Iosif, who apparently is again living in Romania. Therefore, barring any opportunity for the Immigration attorney, or the Court, to cross-examine Mr. Iosif on the facts or his credibility. The Court cannot find, based simply upon the respondent's testimony that he has met any of the statutory or regulatory requirements to establish extraordinary circumstances, as outlined by the Act. Having failed to do so, the Court will find that the one year bar applies in this case, and address the request for withholding only.

The basis of the respondent's claim appears to be that he is a gypsy. Apparently, the respondent says, based upon both his father and grandfather, the gypsies. In his application for asylum there is a written statement attached to the application that sets forth the respondent's family background. And also beginning at paragraph 10, specific incidences of claimed persecution. Apparently, the first incident, respondent says, began in 1995. He claims that two civilians and a policeman stepped out of their car and started to smash

his rear window and the left side of the car. The respondent says that he was not harmed, but that his associate, who was riding in the back, did suffer injuries. This is a little bit contrary to the written statement itself, in which the respondent indicated that he had received minor cuts on his hand. The respondent indicated that he tried to file a complaint with police, but the police, apparently, did not believe his story. They called him names and did not investigate. The respondent says that on August of 1995, there was another incident that occurred at his parent's home. The police, apparently, had gone and was speaking with the respondent's father and grandfather. The respondent tried to intervene and says that he was beaten. He says that his father died shortly thereafter of pulmonary cancer, but the respondent believes that reviewing this incident may have hastened his father's death.

The attack at his parent's house occurred in 1995. The respondent relates to another event that happened at his parent's home in February of 1996. And it was after this event in 1996, that his father died. During this event the respondent says that he was hit in the stomach, and that he had a leg injury, which required treatment. The next event occurred in December of 1996, when the respondent was returning home from work at his slaughter house.

He says that he was stopped at a light and people wearing hoods beat him, and left him on the side of the road almost unconscious.

He says that while the people wore hoods, he could tell from their slacks that they were actually Romanian police. The respondent says that he did not report this incident to the police. He says that after this incident his left arm

was dislocated and he had other wounds. He says that he thinks he was beaten, because he was a gypsy who was successful in the area.

The respondent relates that about four months later, in March of 1997, he received an "invitation" to appear at the police station. He indicated that he was accused of making propaganda against Mr. Funar. The respondent said he denied the accusation and was beaten with sticks and fists, and that three of his ribs were broken. The respondent was told that if there was any further propaganda, they would attack his spouse.

In support of the respondent's testimony that he was beaten severely by police on several occasions, requiring medical treatment. He has submitted, as part of Exhibit 2, medical certificates from the woman, who allegedly treated him. The respondent says that he did not go to a clinic. Initially, he stated because the clinic was closed. Later he testified that he dare not go to the clinic, because they would ask questions, and if he indicated that he had problems with police, that would only bring on more problems. In each instance the respondent received medical treatment from a doctor, who his mother (a former nurse) had worked with. The only evidence of respondent's alleged mistreatment, beatings, injuries, and subsequent treatment, is his testimony and these medical certificates.

On cross-examination, the Government attorney pointed out what is clear on its face, that the medical certificates are all preprinted. All apparently are the same. (See tabs F, G, and H of Exhibit 2). What is also clear is that the documentation is handwritten as to what happened. The

handwrit ing seems to be the same on each certificate. What is curious is that the preprinted forms are all preprinted for the year 2000. And over the date handwritten, to block out the date, at least is the bottom, is the years 1995, 1996, and another in 1996, all corresponding to the alleged dates of the respondent's harm.

The respondent testified that he received each of these certificates after each of the treatments. And the Court cannot find it plausible that the respondent would have received these reatments in the mid 1900's, but the preprinted forms from the doctor would all be dated for the year 2000. This was raised on cross-examination. The respondent did not explain on redirect these discrepancies. Therefore, the Court will give no weight to the documentation relating to the respondent's injuries.

As to the claim itself, the respondent phrases the claim as one against gypsies. However, the respondent is of mixed ethnicity. He says, while his father and grandfather were considered gypsies (respondent also says he is a gypsy), but respondent says, in general, those of mixed ethnicity, one parent a gypsy and the are not, are not considered gypsies. The respondent had indicated at one point in his testimony, that it was difficult to tell from his features whether he was gypsy or not. In fact, the respondent testified that while in high school he did not have any problems, that they did not know he was a gypsy. He says this is because he went to school in a town that was a small distance from his hometown. Relating to his son, the respondent said he did not think his son would have problems as a gypsy, also because he lived in another small town, not near the respondent's family.

The Court notes that the respondent's father and grandfather, although the respondent says are gypsies, were never arrested or detained in Romania. There was no evidence of any other of respondent's family members being arrested or detained, or physically harmed by police. The respondent, in testimony, both on direct and cross, indicated that the authorities apparently had a problem with him, not just because he was a gypsy, but a successful gypsy. The respondent answered in question to the Court, that police expect "presents." He says that this is an implied bribe. The respondent says that he did not pay the bribes and this is the reason, he believes, that he had problems with the authorities for failure to give them presents. The Court surmises that this is probably the case, and that respondent's problem was not so much he was a gypsy, but it was his refusal to pay the police bribes that lead to his alleged problems. The Court also notes that there is a significant amount of time between the last alleged incident and respondent's departure from Romania. The respondent's last claimed incident occurred in March of 1997. The respondent did not leave Romania until September of 1998. There was no mention of any incidents or harm between that time, which diminishes respondent's claim that he would be fleeing persecution. Upon his arrival in the United states, it appeared that the respondent's primary interest was in extending his visitor's visa, rather than seeking asylum. Also lessening the respondent's claim, that his departure was in fear of persecution. The Court also notes that the respondent has apparently lived in the same small area in Romania, for most of his life. The respondent said that he had no problems, based on him being a gypsy, when he moved just a small distance away to go to high school. He also says that his son lives in a larger city, and has had no

problems because he is a gypsy. However, the respondent, himself, on questions from his attorney, indicated he could not move to a larger city, such as Bucharest, and not have problems. The Court finds that this is speculative on the respondent's behalf. There was nothing that indicated that the respondent could not move to a place where he is not known and not live in peace from authorities. The respondent says this is because he has a "file", but there is no evidence that such a file exists. The respondent says that once police know about you in Romania, they know about your country. Why, again, there was no evidence of this. Having found that there is no evidence of any countrywide persecution, and that there are other places that the respondent could go, and also the fact that the respondent's problem appeared to be because he was a successful businessman, who refused to pay bribes, I cannot find that the respondent has established that it is more likely than not that he would be persecuted if he returned to Romania. This is not to say the documents presented by the respondent does not if establish that there is harassment and discrimination against gypsies. But as pointed out by the Government attorney, discrimination and harassment are not the same as persecution.

That turns to the alternative form of relief requested by the respondent. The respondent appears to have established statutory eligibility for voluntary departure. That form of relief will be granted.

Based upon the above and foregoing the following order is hereby entered.

ORDER

IT IS ORDERED that the request for asylum be denied;

IT IS ORDERED that the request for withholding be denied:

IT IS FURTHER ORDERED that the respondent be allowed to depart voluntarily from the United States on or before June 14, 2002. And if respondent fails to depart by that time, the order of voluntary departure would become an order of removal to Romania. The respondent is also ordered to post a voluntary departure bond of $500.

/s/ Agnelis L. Reese
AGNELIS L. REESE
Immigrationn Judge